
ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

ASB-15

1996

Asbestos and Tax Delinquent Property

General

By Statute (NH RSA Ch. 80:60), the State of New Hampshire requires notice of an impending lien be sent by municipalities via certified or registered mail to the owner of record at least thirty (30) days prior to the execution of said lien. The collector, after two (2) years from the execution of the real estate tax lien, shall execute to the lienholder a deed of the land subject to the real estate tax lien and not redeemed. If the town/city is the lienholder, it has the option of taking possession of the property or giving the property owner additional time to pay. The municipality, by giving advance notice to the collector, may chose not to accept an executed deed to the land/property. The reason for non-acceptance is related to the municipality being potentially liable as an owner of property under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, RSA 147-A and 147-B and any other federal or state environmental statute which imposes strict liability on owners for environmental impairment of the real estate involved (as per NH RSA Ch. 80:76:II). If possession of the property is taken, it may lead to either a tax sale, or the return of the property for use by the city/town.

Impacts

At present, protecting a town from environmental liability due to the taking of properties for tax purposes is difficult. Because environmental liability has become a common concern for towns, this fact sheet will attempt to outline some of the issues to be considered. The presence of hazardous waste, asbestos, underground storage tanks, oil, gasoline or solvent contaminated soils, and lead paint can be serious and costly to remediate. Unknown environmental conditions can always be encountered and become a serious financial risk to a town. However, past building or land use knowledge combined with current inspections of the property by city/town code enforcement and health officials can prevent costly errors.

Cities/towns have traditionally considered property related environmental issues to be the responsibility of the owner of record, but in some cases the severity of the site conditions and the lack of owner response has prompted a need for an expedited action. Site situations which qualify as "attractive nuisances" to children, or "imminent hazards" because the site contains dangerous substances, can preclude the normal inspection/investigation approach. As a result, the city/town may elect to address and correct these issues in the interest of the public but without the desire of assuming the liability/liabilities associated with the property. Structural stability, terrain stability, the presence of hazardous substances, and public opinion are major factors prompting remediation activity. In other cases, after review by qualified persons such as a code

enforcement officer/building inspector/health officer, a decision may be made to leave the responsibility and liability for the property with the delinquent tax payer.

Current EPA Policy on Property Foreclosure by Municipalities per its Region One Administrator as of November 20, 1995.

As a matter of Environmental Protection Agency (EPA) policy, a municipality which foreclosed on property is not held liable unless there are some additional circumstances demonstrating the municipality's participation in the management of the property. The definition of owner or operator under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Section 101(20) does not generally include a municipality that forecloses on contaminated property for unpaid taxes unless that municipality causes or contributes to the release of hazardous substances. There is a proposed lender liability rule that addresses this specific issue. Although the rule was struck down as a binding regulation on technical grounds, the EPA has embraced it as policy. Thus it is the EPA's position that a municipality that takes ownership of a property pursuant to a tax lien will not incur liability unless the municipality causes or contributes to contamination at the property as described in the lender liability rule. See attached proposed lender liability rule 40 CFR Ch. 1 (7-1-93 Edition) 300.1105.

40 CFR Ch. 1 (7-1-93 Edition)

300.1105 Involuntary acquisition of property by the government.

- a. Governmental ownership or control of property by involuntary acquisitions or involuntary transfers within the meaning of CERCLA section 101(20)(D) or section 101(35)(A)(ii) includes, but is not limited to:
 1. Acquisitions by or transfers to the government in its capacity as a sovereign, including transfers or acquisitions pursuant to abandonment proceedings, or as the result of tax delinquency, or escheat, or other circumstances in which the government involuntarily obtains ownership or control of property by virtue of its function as sovereign;
 2. Acquisitions by or transfers to government entity or its agent (including governmental lending and credit institutions, loan guarantors, loan insurers, and financial regulatory entities which acquire security interests or properties of failed private lending or depository institutions) acting as a conservator or receiver pursuant to a clear and direct statutory mandate or regulatory authority;
 3. Acquisitions or transfers of assets through foreclosure and its equivalents (as defined in 40 CFR 300.1100(d)(1)) or other means by a federal, state, or local government entity in the course of administering a governmental loan or loan guarantee or loan insurance program; and
 4. Acquisitions by or transfers to government entity pursuant to seizure or forfeiture authority.
- b. Nothing in this section or in CERCLA section 101(20)(D) or section 101(35)(A)(ii) affects the applicability of 40 CFR 300.1100 to any security interest, property, or asset acquired pursuant to an involuntary acquisition or transfer, as described in this section.

Environmental Impairment Example (Asbestos)

Old manufacturing facilities, former gas stations, abutting contaminated properties, buildings with floor drains, sites of illegal landfills, and automotive repair/paint shops are but a few of the prime locations associated with environmental concerns. Current federal regulations require inspections for asbestos prior to renovation or demolition, and prohibit the burning of asbestos contaminated structures. For example, practice burns by the local fire departments to train

personnel are not allowed on buildings containing asbestos because the structures put fire department personnel and abutters at risk due to the potential for asbestos fiber release. All asbestos material which is present in such structures must be removed prior to volume reduction/disposal activities. The presence of asbestos in itself is not a violation of federal or state regulations. In public places, work places, schools, and multiple dwellings, asbestos is regulated so fibers will not be released and adversely affect public health.

Site surveys done during the 1960s and 1970s for asbestos focused **only** on **friable** asbestos. The surveys did not identify non-friable asbestos. Unfortunately, non-friable asbestos can become friable due to aging, degradation, exposure or fire. Additional renovation/demolition efforts sometimes render non-friable asbestos material friable due to sanding, sawing, or drilling. Specific asbestos containing materials most commonly encountered are roofing, siding, flooring, and insulation which is part of a heating/cooling system. Roofing, shingles, and siding have been manufactured with asbestos using Portland cement as a binding agent. Vinyl floor tiles and vinyl sheet flooring have been manufactured using asbestos to strengthen them. It is present in the backing of some vinyl sheet flooring materials. Asbestos cement or mastic was sometimes used to bond tiles and resilient "linoleum" coverings to the floor surface.

In 1977, asbestos containing patching compounds were banned. Some wall and ceiling joints between sheets of wallboard may be patched with asbestos containing material manufactured before 1977. Some large buildings and homes built or remodeled between 1945-1978 may contain crumbly, asbestos-containing material which has either been sprayed or troweled onto the ceiling or walls. Asbestos-containing cement sheets, millboard and paper were frequently used in homes where wood burning stoves were installed. These asbestos containing materials are used as thermal insulation to protect the floor and walls around stoves. Some door gaskets in furnaces, ovens, wood, and coal stoves may also contain asbestos.

Homes constructed between 1930 and 1950 may include asbestos-containing insulation. Wall and ceiling insulation that contains asbestos is generally found inside the wall or ceiling ("sandwiched") behind plaster walls. Hot water and steam pipes in some older homes may be covered with an asbestos-containing material to reduce heat loss, and to protect nearby surfaces from the hot pipes. Pipes may also be wrapped in an asbestos "blanket" or asbestos paper tape. Asbestos containing insulation (ACI) has also been used on furnace ducts. Most asbestos pipe insulation in homes was manufactured from 1920-1972 and is preformed to fit around various diameter pipes.

Any asbestos abatement activities which may release fibers and be accomplished in a non-contained environment must follow the New Hampshire Solid Waste Rules. The adequacy of property and building surveys for asbestos done more than five (5) years ago should be suspect due to regulatory changes. Environmental assessment forms such as those used in the banking industry can be employed as a check list to document environmental concerns.

Asbestos is but one of a number of environmental concerns associated with tax delinquent properties. These properties become liabilities rather than assets and are thus often relinquished by property owners to cities or towns. Listed below are various Divisions of the Department of Environmental Services who may assist with questions related to site specific information needs:

Asbestos

Air Resource Division: (603) 271-1370
Waste Management Division: (603) 271-2925

Hazardous & Solid Waste:

Waste Management Division: (603) 271-2942

**Oil & Gasoline Contamination of
Soil:**

Water Supply and Pollution Control Division:
(603) 271-3644

Lead Paint:

Waste Management Division:
(603) 271-2925 or (603) 271-2942
Lead Paint Program in Division of Health and Human
Services: (603) 271-4507

**Underground & Above Ground
Storage Tanks:**

Water Supply and Pollution Control Division:
(603) 271-3644